

AMENDED IN ASSEMBLY MAY 1, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1514**

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**Introduced by Assembly Members Bonnie Lowenthal and Dickinson**

January 13, 2012

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An act to amend Section 4216.6 of the Government Code, and to add Section 565 to the Public Utilities Code, relating to excavations.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1514, as amended, Bonnie Lowenthal. Excavations: subsurface installations: violations.

Existing law generally requires any person planning to conduct an excavation to contact a regional notification center prior to excavation, and, if practical, to delineate the areas to be excavated. Existing law authorizes the Attorney General, a district attorney, or the state or a local agency that issued a permit to excavate to bring an action for the enforcement of a civil penalty against an operator or excavator who negligently or knowingly and willfully violates these and related provisions.

This bill would increase the maximum amounts for civil penalties that may be assessed for negligent or knowing and willful violations, and would specify what are separate violations for purposes of assessing civil penalties. *The bill would provide that, upon receipt of an investigation report prepared by the Public Utilities Commission, an action may be brought by the Attorney General or the district attorney in the name of the people of the State of California for the enforcement of those civil penalties. The bill would also permit the Public Utilities*

*Commission or an operator to provide an investigation report to the local or state agency that issued the permit to excavate, and would permit the local or state agency to take action to assess those penalties.*

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, gas corporations, heat corporations, pipeline corporations, sewer system corporations, telephone corporations, and water corporations, as defined. Existing law authorizes the commission to establish rules for all public utilities, subject to control by the Legislature. Existing law authorizes the commission after a hearing, to require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. Existing law makes any person who injures or destroys, through want of proper care, any necessary or useful facility or equipment of any telephone, electrical, or gas corporation, liable to the corporation for all damages sustained thereby, and makes any person who willfully and maliciously injures telephone, electric, or gas property liable to the telegraph, telephone, electrical, or gas corporation for 3 times the amount of actual damages sustained thereby.~~

~~This bill would authorize the commission to adopt rules requiring public utilities that are operators, as defined, to comply with the above-described requirements relative to excavations, and to adopt rules to protect subsurface installations and high-priority subsurface installations, as defined, from damage resulting from excavations. The bill would require the commission to adopt rules requiring public utilities to report damage that occurs to utility-owned subsurface installations and high-priority subsurface installations as a result of an excavation. The bill would require the commission to adopt procedures for obtaining from public utilities who are subsurface operators reports of specified violations that the commission determines should be investigated for enforcement, as specified. The bill would require the commission to investigate the cause of any damage reported to the commission and to make a specified investigation report that would be admissible as a public record in any civil penalty enforcement action brought by the Attorney General or a district attorney, or the state or a local agency that issued a permit to excavate, or in an action brought by a telephone, electrical, or gas corporation for damages to its subsurface facilities or equipment. The bill would require the commission to include a summary of any damage reported to the commission by public utility operators~~

that results from excavations and any investigation report in a specified annual report to the Governor and Legislature.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 4216.6 of the Government Code is
- 2 amended to read:
- 3 4216.6. (a) (1) Except as provided in paragraph (2), and in
- 4 addition to all other penalties, any operator; *or* excavator; ~~or local~~
- 5 ~~agency~~ that *negligently* violates any requirement of this article is
- 6 subject to a civil penalty in an amount not to exceed ten thousand
- 7 dollars (\$10,000) for the first violation, and not more than one
- 8 hundred thousand dollars (\$100,000) for each subsequent violation.
- 9 (2) In addition to all other penalties, any operator; *or* excavator;
- 10 ~~or local agency~~ that knowingly and willfully violates any
- 11 requirement of this article is subject to a civil penalty in an amount
- 12 not to exceed fifty thousand dollars (\$50,000) for the first violation,
- 13 and not more than two hundred fifty thousand dollars (\$250,000)
- 14 for each subsequent knowing and willful violation.
- 15 (3) (A) Each violation of a separate requirement of this chapter
- 16 is a separate violation that is subject to civil penalty pursuant to
- 17 paragraphs (1) and (2).
- 18 (B) Each day that a violation of a separate requirement of this
- 19 chapter takes place is a separate violation that is subject to civil
- 20 penalty pursuant to paragraphs (1) and (2).

(C) Multiple separate violations as specified in this paragraph arising from a single excavation performed shall each only be subject to the maximum civil penalty for a first violation if the operator; ~~or excavator, or local agency~~ has not previously been subject to a civil penalty pursuant to this ~~section~~ *section*.

(4) Except as otherwise specifically provided in this article, this section is not intended to affect any civil remedies otherwise provided by law for personal injury or for property damage, including any damage to subsurface installations, nor is this section intended to create any new civil remedies for those injuries or that damage.

(5) This article shall not be construed to limit any other provision of law granting governmental immunity to state or local agencies or to impose any liability or duty of care not otherwise imposed by law upon any state or local agency.

(b) *(1)* Upon receipt of an investigation report prepared by the Public Utilities Commission ~~pursuant to subdivision (d) of Section 565 of the Public Utilities Code~~, an action may be brought by the Attorney General or the district attorney in the name of the people of the State of California for the enforcement of the civil penalty pursuant to this section. Alternatively, the Public Utilities Commission ~~or an operator~~ may provide an investigation report to the local or state agency that issued the permit to excavate and the local or state agency may take action to assess a civil penalty pursuant to this section. If penalties are collected as a result of a civil suit brought by the Attorney General, a district attorney, or a state or local agency that issued a permit to excavate, for collection of those civil penalties, the penalties imposed shall be paid to the prosecuting agency. If more than one agency is involved in enforcement, the penalties imposed shall be apportioned among them in a manner that will fairly offset the relative costs incurred by the ~~state or local agencies, or both~~, in collecting these fees. ~~The Public Utilities Commission shall be entitled to an apportionment of the penalties for the cost of completing its investigation report.~~

*(2) Nothing in this section shall be construed to provide additional jurisdiction to the Public Utilities Commission.*

SEC. 2. Section 565 is added to the Public Utilities Code, to read:

~~565. (a) For purposes of this section, “excavation,” “excavator,” “emergency,” “high-priority subsurface installation,”~~

1 ~~“local agency,” “operator,” “state agency,” and “subsurface~~  
2 ~~installation” have the same meanings as defined in Section 4216~~  
3 ~~of the Government Code.~~

4 ~~(b) The commission may adopt rules requiring public utilities~~  
5 ~~that are operators to comply with the requirements of Article 2~~  
6 ~~(commencing with Section 4216) of Chapter 3.1 of Division 5 of~~  
7 ~~Title 1 of the Government Code, including rules for responding~~  
8 ~~to an emergency.~~

9 ~~(c) (1) The commission shall adopt rules requiring public~~  
10 ~~utilities who are subsurface operators to report damage that occurs~~  
11 ~~to utility-owned subsurface installations and high-priority~~  
12 ~~subsurface installations as a result of an excavation. The~~  
13 ~~commission may adopt different rules for utility facilities that are~~  
14 ~~and are not high-priority subsurface installations and different~~  
15 ~~rules depending upon whether the damage does or does not result~~  
16 ~~in an emergency.~~

17 ~~(2) The commission shall adopt procedures for obtaining from~~  
18 ~~public utilities who are subsurface operators reports of violations~~  
19 ~~of Article 2 (commencing with Section 4216) of Chapter 3.1 of~~  
20 ~~Division 5 of Title 1 of the Government Code that the commission~~  
21 ~~determines should be investigated as an enforcement action~~  
22 ~~pursuant to Section 4216.6 of the Government Code, including~~  
23 ~~procedures regarding which violations are required to be~~  
24 ~~immediately reported. The procedures shall require reporting of~~  
25 ~~all pertinent information necessary for the commission to~~  
26 ~~thoroughly investigate the complaint and prepare a complete~~  
27 ~~investigation report pursuant to subdivision (d).~~

28 ~~(d) (1) Upon receipt of a report of violation pursuant to~~  
29 ~~paragraph (2) of subdivision (c), the commission shall investigate~~  
30 ~~the violation and prepare an investigation report documenting any~~  
31 ~~violation determined by the commission to warrant possible~~  
32 ~~enforcement pursuant to Section 4216.6 of the Government Code.~~  
33 ~~An investigation report shall include, but not be limited to, all of~~  
34 ~~the following:~~

35 ~~(A) The facts and evidence establishing the violation.~~

36 ~~(B) A list of witnesses to the violation and contact information~~  
37 ~~for the witnesses.~~

38 ~~(C) All contacts with or responses from the regional notification~~  
39 ~~center.~~

40 ~~(D) Any excavation plans associated with the violations.~~

1     ~~(2) The report shall be admissible as a public record in any~~  
2     ~~action brought pursuant to Section 4216.6 of the Government Code~~  
3     ~~or pursuant to Chapter 4 (commencing with Section 7951) of~~  
4     ~~Division 4.~~

5     565. ~~(e) Notwithstanding~~

6     ~~(a) Subject to~~ Section 583, the commission may provide the  
7     Attorney General, the district attorney for the county in which the  
8     damage occurred, the local or state agency that issued the permit  
9     to excavate, or the United States Department of Transportation's  
10    Pipeline and Hazardous Materials Safety Administration, a copy  
11    of an investigation report ~~completed pursuant to subdivision (d)~~  
12    to take enforcement action pursuant to subdivision (b) of Section  
13    4216.6 of the Government Code.

14    ~~(f)~~

15    ~~(b)~~ The commission shall include a summary of any damage  
16    reported to the commission ~~pursuant to subdivision (e)~~ and of any  
17    investigation undertaken ~~pursuant to subdivision (d)~~ in the report  
18    submitted to the Governor and Legislature pursuant to paragraph  
19    (4) of subdivision (a) of Section 321.6.

20    SEC. 3. No reimbursement is required by this act pursuant to  
21    Section 6 of Article XIII B of the California Constitution because  
22    the only costs that may be incurred by a local agency or school  
23    district will be incurred because this act creates a new crime or  
24    infraction, eliminates a crime or infraction, or changes the penalty  
25    for a crime or infraction, within the meaning of Section 17556 of  
26    the Government Code, or changes the definition of a crime within  
27    the meaning of Section 6 of Article XIII B of the California  
28    Constitution.